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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,136	12/05/2003	Kunani Nihipali	121108.00002	8976

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EXAMINER

GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/729,136

Applicant(s)

NIHIPALI, KUNANI

Examiner

Keshia Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) 32-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 21-36 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 32-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally presented method claims were directed to the method of burial associated with the apparatus comprising a door and a slidable tray; the newly presently claims are method claims directed toward the apparatus comprising a lid and clamps.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 32-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Response to Arguments***

2. Applicant's arguments filed 8/16/06 have been fully considered but they are not persuasive. The arguments are directed to claims that are all newly submitted. These arguments are considered to be addressed in the new grounds of rejection, presented due to Applicant's amendments, below.

### ***Claim Objections***

3. Claims 21-22, 26, 28, and 32-33 are objected to because of the following informalities: the recitation "pela" lacks proper antecedent basis, it is suggested that

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such recitations be replaced with "tissue of the body" or "tissue." Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 22 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The written description discloses neither that the vessel door is to be opened "once a determination has been made that the pela has separated from the bone structure" nor how such a determination is to be made. As such, the language is considered to introduce new matter that should be cancelled from the claims.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 22 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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8. The term "once a determination has been made" in claims 22 and 28 is a relative term, which renders the claim indefinite. The term "once a determination has been made" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The written description is unclear as to what constitutes a determination and just how such a determination is reached. As such, it is unclear as to when such a limitation would be met and is therefore considered indefinite.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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11. Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fullard-Leo in view of Morita (JP 2002238504) in view of Campbell (US 1,452,907) in view of Houfek (US 3,951,131), Kozinczuk (US 3,769,958), and Maniscalco (US 3,774,008) and in further view of Kitten (US 5,481,964) and Bentulan (US 6,681,759).

In regard to Claims 21-23, Fullard-Leo discloses a method of preparing a body for burial comprising disrobing the body (implicit), wrapping the body in kapa cloth (paper mulberry leaves), conducting a ritual over the body and heating the body so as to softened the body tissue, then collecting the degraded body tissue (pela) from the bones but does not disclose an apparatus for doing so (pages 1-2). One of ordinary skill in the art would have recognized that boiling and steaming for use in methods of separating flesh from bone, as supported by Morita et al (translation: whole document, especially [0008]). Campbell discloses a method and an apparatus for steaming (boiling) foods, including meats. The method comprises providing a vessel B with a door A for entry and exit of the food, a placing the food on a tray K, and injecting steam through a plurality of steam ports (two steam inlets) within the vessel to steam the food; the tray K is made of a mesh wiring having openings through which the tissue of the body falls upon separation from the bone structure (Fig. 1, lines 37-63 and 71-84). Campbell discloses that the steam ports connected to steam pipes that run through the cabinet but do not expressly disclose that the steam is further provided in the form of a plurality of steam jets. However, it would have been obvious to one of ordinary skill in the art to provide a plurality of steam jets lining the interior of the vessel since it is known to introducing steam into a cooking or other steam environment using jets, which

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allows for rapid heating of contents within apparatus, as supported by Houfek (US 3,951,131, column 1, lines 10-26), Kozinczuk (US 3,769,958), and Maniscalco (US 3,774,008).

Campbell does not expressly disclose that tray is slidable and supported by a plurality of rollers. However, it would have been obvious to one of ordinary skill in the art to modify the tray of Campbell to comprise rollers, since it is known within the art to provide a slidable tray with rollers to increase ease of moving the tray and food into and out of a vessel, as supported by Kitten (US 5,481,964, whole document, especially Figs., abstract, column 1, lines 40-60) and Bentulan (US 6,681,759, column 1; lines 30-43). Fullard-Leo in view of Campbell and the other supporting prior art disclose the claimed invention but do not expressly disclose a specific dimension for the openings of the wire mesh or a specific temperatures and rate for injecting the steam. However, it is known that the size of the openings of wire mesh affects what may or may not pass through it. It is also known that the temperature and rate associated with cooking a substance, especially meat on bones, affects the amount of decomposition of the substance. As such, the dimension of the wire mesh openings as well as the temperature and length of time associated with steaming boned meat are recognized result-effective variables. Thus, it would have been obvious to one of ordinary skill in the art to provide the methods of Fullard-Leo in view of Campbell et al. with a specific dimension for the openings of the wire mesh or a specific temperatures and rate for injecting the steam, since it has been held that discovering an optimum value of a result effective variable

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involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

It is further noted that “conducting a ritual” can constitute any action that may normally take place on a repeated basis—especially in conjunction with another action—such as removing organs prior to burial of a body, placing articles removed from a body into a pile, or gathering tools for use in association with a task.

In regard to Claim 24, the vessel further comprises a funnel portion F for channeling tissue after falling through the mesh tray and a container for collecting the tissue (Campbell: lines 42-63).

In regard to Claim 25, the steam injected into the vessel is to maintain the moisture of the contents contained within it (Campbell: lines 9-14).

In regard to Claims 26-31, See discussion for Claims 21-25. Additionally, the recitation “accommodates the body weight of 400 lbs with dimensions of four feet in diameter by ten feet in length” is considered to be functional language. It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claims. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such art reference, regardless of whether



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the prior art reference explicitly discloses such capacity for performing the recited function. *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be inherent characteristic of the prior art reference, applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). Additionally, it is known that the dimensions and capacity of a cooking vessel affects the size of materials that can be placed therein. Thus, it would have been obvious to one of ordinary skill in the art to provide the cooking vessel with specific capacity capabilities, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Oestigaard ("Sacrifices of Raw, Cooked, and Burnt Humans").

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 9:30 a.m. - 7 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner  
Art Unit 3761

klg 10/27/06

